



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 31, 1996

Prissy Hickerson, Treasurer
Huckabee Election Committee
P.O. Box 1557
Texarkana, Arkansas 75504-1557

RE: MUR 4323

Dear Ms. Hickerson:

On March 13, 1996, the Federal Election Commission notified the Huckabee Election Committee ("the Committee") and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and of information supplied by the Huckabee Election Committee ("U.S. Senate"), the Commission, on October 16, 1996, found reason to believe that the Committee and you, as treasurer, violated 2 U.S.C. § 441b. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office, along with responses to the enclosed questions and requests for documents, within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Prissy Hickerson, Treasurer

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If the Huckabee Election Committee, as an entity separate from the Huckabee Election Committee (U.S. Senate), intends to be represented by counsel in this matter, please advise the Commission in writing by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Anne A. Weissenborn, the senior attorney assigned to this matter, at (202) 219-3400.

Sincerely,


Lee Ann Elliott
Chairman

Enclosures

Factual and Legal Analysis
Designation of Counsel Form
Questions and Requests for Documents

cc: Benjamin L. Ginsberg, Esquire

FACTUAL AND LEGAL ANALYSIS

**RESPONDENTS: Huckabee Election Committee
Prissy Hickerson, as treasurer**

MUR: 4323

I. GENERATION OF MATTER

MUR 4323 was generated by a complaint filed by the Democratic Senatorial Campaign Committee ("the DSCC") on March 8, 1996, alleging violations of the Federal Election Campaign Act ("the Act") and of the Commission's regulations by the Huckabee Election Committee and Prissy Hickerson, as treasurer ("the State Committee"). Respondents were notified of the complaint on March 13, 1996. No response has been received from this committee.

The Huckabee Election Committee (U.S. Senate) ("the Senate Committee") is the principal campaign committee of Mike Huckabee for his 1995-96 campaign for the United States Senate. The State Committee is the campaign committee of Mike Huckabee for his 1994 campaign for the office of Lieutenant Governor in the State of Arkansas. On August 15, 1995, the Huckabee Exploratory Committee (U.S. Senate) submitted its Statement of Organization to the Secretary of the Senate. On October 12, 1995, the Senate Committee registered with the Secretary of the Senate; on the same date Mike Huckabee filed his Statement of Candidacy. More recently, on May 30, 1996, Mike Huckabee withdrew from the Senate race after having won the Republican primary election on May 21, 1996.

In MUR 4323 the complainant alleges that the State Committee made expenditures to test the waters for a campaign by Mike Huckabee for the U.S. Senate in 1995.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

2 U.S.C. § 431(2) defines "candidate" as an individual who is seeking nomination or election to Federal office, who has received contributions or made expenditures in excess of \$5,000, or who has given consent to others to receive contributions or make expenditures in excess of \$5,000. Within 15 days of becoming a candidate, an individual must designate a principal campaign committee to receive contributions and to make expenditures on his or her behalf. 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 110.1(a). Within 10 days of being designated by the candidate, a principal campaign committee must file a Statement of Organization. 2 U.S.C. § 433(a).

The Act's definitions of "contribution" and "expenditure" at 2 U.S.C. §§ 431(8)(A)(i), 431(9)(A)(i) and 441b(b)(2) include "anything of value" provided by a person "for purposes of influencing a federal election" or "in connection with any [federal] election." 11 C.F.R. §§ 100.7(a)(1)(iii)(A) and 100.8(a)(1)(iv)(A) define "anything of value" to include in-kind contributions.

11 C.F.R. §§ 100.7(b)(1)(i) and 100.8(b)(1)(i) exclude from the definitions of "contribution" and "expenditure" any funds received or payments made "solely for the purpose of determining whether an individual should become a candidate" According to these same regulations, activities which may be undertaken in order to "test-the-waters" for a candidacy include, but are not limited to, conducting an opinion poll, travel and the use of telephones. Such testing-the-waters activities must involve funds which are permissible under the Act. If the

individual later becomes a candidate, testing-the-waters contributions and expenditures become reportable on the first report filed by the candidate's principal campaign committee. 11 C.F.R. § 101.3.

Pursuant to 11 C.F.R. § 106.3(b)(1), expenditures made by an entity other than a political committee for federal campaign-related travel are reportable by the federal committee benefited. If a trip made by a candidate involves both campaign-related and non-campaign-related stops, the portion of the expenditures for this trip which are allocable to campaign activity are reportable expenditures. Incidental contacts are not considered to be campaign activity. 11 C.F.R. § 106.3(b)(2). "Where a candidate makes one campaign-related appearance in a city, that city is a campaign-related stop and the trip to that city is reportable." AO 1994-37 citing 11 C.F.R. § 106.3(b)(3).

11 C.F.R. § 110.3(d) prohibits the transfer "of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee for a federal election" According to the Explanation and Justification which accompanied the submission of this regulation to Congress in August, 1992, the rule addresses situations in which "candidates for federal office who were once candidates for state office have state campaign committees with funds leftover from a state campaign" and "wish to transfer these funds to their federal campaign committees for use in the federal campaign." 57 FR 36344 (August 12, 1992). According to the revised implementation plan for this regulatory provision, "[t]he rule applies to transfers from any nonfederal campaign committee, including campaign committees for any state or local office." 58 FR 14311 (March 17, 1993).

B. Factual Background to Allegations

1. Arkansas State Election Law

Arkansas state law limits to \$1,000 per election per candidate the amount which individuals, corporations, labor organizations and banks may contribute to candidates for state office. (Arkansas Code Annotated ("A.C.A.") § 7-6-203(a) and (b). Arkansas law prohibits candidates for state office from raising money earlier than two years before their next election, unless they are attempting to retire debt from an earlier campaign. (A.C.A. § 7-6-203(f)). Candidates may raise enough to cover "reasonable" fundraising expenses. (A.C.A. § 7-6-219 and Arkansas Ethics Committee Opinion No. 91-EC-012). The governor, lieutenant governor, secretary of state, certain other elected state officials and members of the general assembly may not accept contributions during the period beginning 30 days before a regular legislative session and ending 30 days after such session. (A.C.A. § 7-6-203(g)).

2. Press Allegations re: Huckabee State Campaign Debt

The complaint in MUR 4323 includes as enclosures a number of news stories in Arkansas publications concerning fundraising undertaken by the State Committee and expenditures made by that committee in 1995. For example, the computer version of a story printed in the Commercial Appeal on October 26, 1995 asserts under the headline, "Huckabee Starts Senate Bid For Arkansas, Not GOP," that as of that date Mr. Huckabee had raised \$138,000 since his 1994 state election, although his state campaign had ended with a debt of only \$20,000 - \$35,000. (Complaint, attached Item #8). Another computer version of a story, this one dated November 5, 1995 and carried in the Arkansas Democrat-Gazette, is entitled "Huckabee Digs

Out of Debt . . . " It uses the figures of \$137,650 for monies raised and \$35,560 for state election-related debt. (Compliant, attached Item #12).

A computer version of yet another newspaper story attached to the complaint is dated August 27, 1995 and bears the heading, "Huckabee's Not Sweating This Dilemma." Carried in The Commercial Appeal of Memphis, the story contains the following:

As his bad luck would have it, Huckabee organized a Senate exploratory committee on the very day the Whitewater grand jury handed down a 21-count indictment, 19 counts naming Tucker.

Huckabee claims that is just pro forma and he is months away from making a decision about the Senate race. But his campaign finance records belie that. Senate rules require candidates to file a financial disclosure report after receiving or spending more than \$5,000. Huckabee hasn't filed one yet - he said last week he has yet to reach the threshold.

But his state campaign finance records show the \$29,811-a-year lieutenant governor is collecting and spending from \$20,000 to \$30,000 a month campaigning for something.

(Complaint, attached Item #7).

In an attachment to the complaint entitled "Analysis of Huckabee's Post Election 1994 Election Report," which was apparently compiled on behalf of the complainant, it is stated that "[a]ccording to Huckabee's own records, he raised \$159,322.27 to retire a post-campaign debt of \$11,739.01." The same attachment states that a math error resulted in an overstatement by \$24,000 of the State committee's debt. It continues:

Had the math error not occurred, and based upon actual calculations, the campaign should have retired its debt at the end of May, 1995 with a surplus of \$8,805.65. However, due to the miscalculation of debt, an additional \$72,284.22 was raised with expenditures of \$57,268.85

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subsequent to the month of May 1995. If the debt was overstated by nearly \$24,000, then a real question arises as to where that \$24,000 actually went.

(Complaint, attached Item #3, page 1).

On March 28, 1996, the Arkansas Ethics Commission ("AEC") released two rulings in a letter addressed to then Lt. Governor Mike Huckabee. These rulings, based upon a review requested by Mr. Huckabee of his 1994 state campaign's post-election records and reports, were as follows:

RULING NUMBER 1

THE CONTRIBUTION AND EXPENDITURE REPORTS FILED BY
LT. GOVERNOR HUCKABEE'S CAMPAIGN IN 1995 WERE
INACCURATE.

- - -

RULING NUMBER 2

THE HUCKABEE CAMPAIGN DID NOT ACT REASONABLY IN
RAISING \$91,000 TO SATISFY A DEBT THAT IT REPORTED AS
\$35,161.09.

Certain elements in the findings of fact released with these rulings are relevant to the present matter. With regard to inaccuracies in the reports filed by the 1994 campaign cited in Ruling 1, the AEC found that a "[r]eview of the underlying records revealed that the candidate's post-election travel was primarily to in-state political functions, not solely related to debt retirement, but also to general political activity which the Huckabee campaign assumed should also be paid out of campaign funds."

The findings of fact related to Ruling 2 contain the following:

(a) When Lt. Governor Huckabee finished his 1994 campaign, he finished it in debt. After a review of the records, it was determined that

the debt was not greater than \$35,161.09. Of this amount, \$7,366.09 reflected reimbursements to the candidate and his spouse for expenses incurred during the 1994 campaign

(b) The staff review found evidence that on August 1, 1995, the \$15,000 campaign debt owed to political consultant Dick Morris was forgiven. Smaller debts totaling \$3,164.91 had already been refunded Therefore, the total amount of debt finally owed as a result of the 1994 campaign and paid through 1995 efforts to retire this debt was \$16,996.18.¹

(c) The majority of funds expended in 1995 were for administrative costs and expenses incurred in 1995. When the Huckabee campaign began spending money raised by debt retirement fund raisers, most of the money was spent on administrative costs. These administrative costs related to general political activity, including attending lunches, benefits and other political functions. . . .

(d) Brenda Turner was promised a salary of \$635.00 per week for work performed between January 1 and May 7, 1995. She has stated that no more than half of this work was related to debt retirement. She was paid \$10,545.99 in May, 1995, after the first debt retirement fund raising effort, for work performed between January 1 and May 7, 1995.

(e) All postage and telephone expenses, totaling almost \$18,000 were paid through contributions received in 1995. Not all of these expenses related to debt retirement. Some of these were related to general political activity.

(f) In May, 1995, the campaign reported receiving contributions of \$34,195.17, just less than the total 1994 campaign debt of \$35,161.09. The review showed that only \$4,500.00 was paid in May to retire the campaign debt. The remaining expenditures went to post-election administrative costs.

The AEC also reached a series of conclusions which included, among others, the following:

(1) Lt. Governor Huckabee's 1994 campaign ended in debt. Pursuant to Ark. Code Ann. §§ 7-6-203 and 219, the campaign was allowed to raise

¹ \$35,161.09 minus \$15,000 minus 3,164.91 equals \$16,996.18.

funds more than 2 years before the lieutenant governor's next election for the sole purpose of retiring the debt from the previous campaign.

(3) In 1991, the Commission issued Ethics Opinion 91-EC-012 which provided that, in addition to raising funds to retire the amount of [his or her] debt, a candidate could also use campaign funds to pay reasonable expenses related to retiring the debt. . . . The Opinion states that such costs, however, must be legitimately and reasonably related to debt retirement and administering the past debt funds.

(4) It is not reasonable for a campaign to use funds raised pursuant to debt retirement to pay off political expenses which do not directly relate to debt retirement.

(6) It is not reasonable for a campaign to raise \$91,825.00 in contributions to retire a campaign debt of \$35,161.09.

3. Allegations in the Complaint

The complaint in MUR 4323 alleges that funds raised by the State Committee were used to fund activities undertaken by, or on behalf of, Mike Huckabee's campaign for nomination to the U.S. Senate. In particular, the complaint cites two specific instances of alleged State Committee-funded, but Senate Committee-related, testing-the-waters activity: a fundraising letter and survey mailed in May, 1995, and a trip to Washington, DC in August, 1995. The complaint also, through the news articles attached, emphasizes alleged discrepancies between the State Committee's actual debt and the amount of post-election contributions collected, raising questions as to the uses of other amounts received over and above the total of state campaign debts owed.

a. Letter and Survey

The complainant alleges that, according to a news report published on July 24, 1995, in the Arkansas Democrat-Gazette, Mr. Huckabee had decided as of that date to establish an exploratory committee related to a possible campaign for nomination to the office of U.S. Senator. (Complaint, page 2; attached Item #11). This decision is seen by the complainant to have been the result of favorable responses to a letter sent earlier to Republicans in Arkansas which asked if Mr. Huckabee should run for the Senate. In the news account Mr. Huckabee is quoted as having stated that there had been an "incredible" response to the letter. (Complaint, attached Item #11).

The complainant states that no expenditures related to the letter cited in the Democrat-Gazette story are to be found in the Senate Committee's reports filed with the Commission, while the cited news report stated that "Huckabee spent \$3,000 in printing and \$5,000 in 'office supplies' from his state campaign account in the month of July." The complaint alleges that these State Committee expenditures were "to finance 'testing the waters' activities for [Huckabee's] inevitable Senate run, in violation of federal law." (Complaint, page 2).

b. Trip to Washington, DC

The complainant, quoting in part from a story in the Arkansas Times on February 9, 1996, also alleges that Mike Huckabee "had his Lieutenant Governor's campaign pay the expenses for him and his campaign aide, Brenda Turner, to travel to Washington, DC" in 1995. According to this news story, which is also attached to the complaint, Huckabee

charged, as a 1994 campaign expense, \$2,000 for an August [1995] trip by him and campaign aide Brenda Turner to Washington. The trip, undertaken in part to explore his Senate prospects and in part to talk to

political consultant Dick Morris, also produced no direct 1994 campaign contributions, other than forgiveness of a debt to Morris

(Complaint, attached Item #3).

Also included with the complaint are several computer versions of other newspaper stories run in August, 1995 which address the same August, 1995 Washington trip as a testing-the-waters activity. One story entitled "Huckabee Gets Signs He'd Be Hit If He Ran," which was carried in the Arkansas Democrat-Gazette on August 6, read:

Showing signs of a Senate run, Lt. Gov. Mike Huckabee spent the past week in the nation's capital laying groundwork for 1996.

Huckabee met with key Republicans, including [Senate] Majority Leader Bob Dole of Kansas and House Speaker Newt Gingrich of Georgia, during his three-day visit to Washington.

The response, Huckabee said, was overwhelmingly positive. "It's been incredible," he said. "If I'd had this kind of reaction in '92, I'd already be here."

(Complaint, attached Item # 9).

On the same date the Washington Post ran a story entitled "Clinton Advisor May Aid GOP Arkansan," which began:

When Arkansas Lt. Gov. Mike Huckabee (R) came to town last week to discuss his planned race for the Senate vacancy created by the retirement next year of Sen. David Pryor (D), he brought some surprising news.

(Complaint, attached Item # 9). (Emphasis added).

4. Responses to Complaint

a. Letter and Survey

With regard to the fundraising letter cited in the complaint, the Senate Committee response asserts that "the May 1995 mailing . . . had a dual purpose. The main purpose was to

retire debt from [sic] 1994 Lt. Governor's campaign. . . . The second purpose of the mailing was to allow Lt. Governor Huckabee to gauge his constituents' views on a number of important state issues." In the latter regard, and citing the attached affidavit signed by Beverly Turner,

Mr. Huckabee's state campaign director, the response states:

Thus, attached to the two-page debt retirement letter was a ten-question opinion survey on issues such as school construction, highway taxes, sales taxes on food, an informed consent law, welfare system reform, the death penalty, drunk-driving laws and the [sic] certain amendments to the Arkansas Constitution. . . . Given that Senator Pryor's retirement announcement occurred only days earlier on April 21, 1995 and attracted a high level of media coverage, speculation as to who might succeed him was also a legitimate state issue of importance to the Lt. Governor's office. . . . For this reason alone, one brief question in the constituent survey asks for an opinion as to whether Lt. Governor Huckabee should consider running for the open U.S. Senate seat.

(Senate Committee Response, page 3).

According to the Senate Committee, this one survey question, "which does not advocate election or defeat, solicit money or even gauge support given the question's insignificant role in the mailing as a whole, cannot be construed as a 'testing-the-waters' effort" (Senate Committee Response, page 3). The Senate Committee also argues that the costs of the mailing were "paid out of Lt. Governor Huckabee's state account."

In an affidavit, Ms. Turner has stated that the "main fundraising vehicle" for debt retirement used by the Huckabee campaign for Lt. Governor was the letter sent out in May, 1995.

She says:

Given my position as Campaign Director of Mr. Huckabee's 1994 campaign for Lt. Governor in Arkansas, after the election I assumed responsibility for ensuring that all outstanding debts stemming from this campaign were settled in an appropriate manner so as to close out our books and banking activity. In order to fully comply with an Arkansas law prohibiting fundraising activities during a state legislative session, it

was not until May of 1995 that we began our fundraising efforts to help retire the debt from this campaign.

Ms. Turner has stated further that "[t]his letter related solely to debt retirement for the 1994 Lt. Governor's race. It never directly or indirectly mentions the U.S. Senate seat in Arkansas being vacated by Senator Pryor." Ms. Turner acknowledges, however, the ten-question opinion survey attached to the letter and the one question which expressly addressed "whether or not Lt. Governor Huckabee should consider running for the seat." Ms. Turner has gone on to say that,

[b]ecause the sole purpose of the mailing comprised of the letter and the survey was to raise funds to retire the debt from his state election campaign and to obtain constituent views on a variety of important state issues, it was paid for out of Lt. Governor Huckabee's state account. Neither the letter nor the survey were sent for the purpose of "testing the waters" regarding a possible U.S. Senate bid. Indeed, given the level of speculation and press coverage surrounding Mr. Pryor's announcement, the one brief question out of this four-page mailing as to who would succeed him was a legitimate state issue of concern to the Lt. Governor's office.

b. Trip to Washington, DC

The Senate Committee argues that the trip to Washington, DC cited in the news stories was "not a 'testing the waters' trip under federal law." Rather, the trip assertedly had as its "sole purpose" the discussion of a debt owed to political consultant Richard Morris by the State Committee. As evidence of this asserted fact, it is noted that Ms. Turner, who was director of Mr. Huckabee's 1994 campaign for lieutenant governor, accompanied Mr. Huckabee to Washington on the same trip "because she was in charge of all debt retirement efforts stemming from that race."

In an affidavit, Ms. Turner has denied "unequivocally" that the Washington trip was for purposes of "testing-the-waters." She states that the trip took place on August 1-3, 1995, that its "sole purpose" was to meet with Mr. Morris, and that the original plan had been to meet with Mr. Morris in Arkansas. According to Ms. Turner, she and Mr. Huckabee met with Mr. Morris on August 1 and August 2. "At the conclusion of the August 2nd meeting, Mr. Morris agreed to forgive the debt owed to him."

Ms. Turner also has stated:

However, given that we had substantial time on our hands during our trip and that Lt. Governor Huckabee had gained some national recognition for being the first Republican to win a state-wide election in President Clinton's home state, Lt. Governor Huckabee took the opportunity to make courtesy visits with several prominent Republican leaders, conservative organizations and members of the Press, including Senator Dole, Speaker Gingrich, Majority Leader Arney, Senator Faircloth, the National Republican Senatorial Committee, the Senate Steering Committee comprised of conservative U.S. Senators, Washington Post columnist David Broder, and political commentator Fred Barnes.

Ms. Turner has acknowledged that Mr. Huckabee was asked questions during his time in Washington about the U.S. seat in Arkansas, but asserts that, beyond "informal questions" in this regard, "no discussions or meetings occurred for the purpose of determining whether Lt. Governor Huckabee should become a candidate."

5. Analysis

a. Letter and Survey

According to the Senate Committee and Brenda Turner, the May, 1995 letter and survey were intended to raise money for State Committee debt retirement and to obtain constituent opinion on "state issues." Ms. Turner has stated in her affidavit that this mailing was the

principal fundraising tool used by the State Committee for debt retirement. The Senate Committee response argues that the letter described briefly the previous state legislative session and asked for contributions to pay off the State Committee's 1994 debt.

Both Ms. Turner and the Senate Committee have acknowledged that the opinion survey enclosed with the letter included what they term "a throw-away question" as to whether Mr. Huckabee should enter the race for the open U.S. Senate seat in 1996. Both argue that this question was part of an assessment of views on "legitimate state issues." These state issues included, among others, welfare reform, the death penalty, and highway taxes.

It is apparent that one of the questions in the State Committee's survey expressly addressed the issue of whether Mike Huckabee should become a candidate for the Senate. Whether or not this particular question also involved a "state issue," it related directly to a federal election and in itself clearly constituted testing-the-waters activity. The remaining nine questions were apparently issue-related; however, several, if not all, had federal as well as state implications and would have been potentially useful for a federal campaign.

As is noted above, the Arkansas Ethics Commission has determined that the amount of funds raised by the State Committee in 1995 went considerably beyond that which that committee should reasonably have raised to pay off state campaign-related debts. The Ethics Commission also found that a portion of these funds was used in 1995 for "general political activity," not for state campaign-related debt reduction. Ms. Turner, campaign director of Mr. Huckabee's state campaign, has asserted that the 1995 letter was "the main fundraising vehicle" for retiring the state campaign's debt; hence, contributor response to that letter was

apparently the source of the funds cited by the Ethics Commission as not "reasonable" in amount and used for purposes other than payment of debt.

Given the federal election-related contents of the survey enclosed with the May, 1995 fundraising letter and the non-debt retirement uses to which a major portion of the funds received were put, the costs of the mailing apparently constituted testing-the-waters expenditures on behalf of Mr. Huckabee's campaign for the U.S. Senate. The State Committee paid all of the costs of the letter and survey. There is no evidence in hand that any of the State Committee's outlay has been reimbursed by the Senate Committee.

As stated above, 11 C.F.R. § 110.3(d) prohibits transfers of funds, including excess funds, from a candidate's previous state campaign committee to his or her newer federal committee. In the present matter, Mr. Huckabee had not yet formed a federal committee when the letter and survey needed to be financed, and the State Committee chose to make the related expenditures itself. The State Committee could not, however, use funds it could not otherwise legally have transferred to make direct expenditures on behalf of a potential Huckabee federal campaign.

Once Mr. Huckabee went beyond exploring a potential candidacy and became a candidate for federal office in October, 1995, the State Committee's earlier testing-the-waters expenditures on behalf of his possible federal campaign became in-kind contributions to the Senate Committee and expenditures under the Act. Because Arkansas state law permits contributions by corporations, banks and labor organizations to candidates for state office, the funds used by the State Committee for its in-kind contributions to the Senate Committee would likely have contained impermissible monies.

The response received from the Senate Committee does not state the amount spent on the May, 1995 letter and survey, nor does it give the number of letters and surveys mailed. It is possible, however, to approximate these costs by using the reports filed by the State Committee with the AEC for May, June, and July 1995. (Attachment 2). These reports, itemized by payee, amount, and purpose, aggregate disbursements made by the State Committee during these months.

Given the purposes reported for these State Committee disbursements, the following payments may have been made in connection with the May letter and survey:

<u>Month</u>	<u>Payee</u>	<u>Purpose</u>	<u>Amount</u>
May, 1995	U.S. Postal Service	Postage	\$ 137.95
May, 1995	Griffith Enterprises	Mail Expenses	1,500.00
June, 1995	Griffith Enterprises	Mail Expenses	4,681.58
June, 1995	U.S. Post Office	Mail Expenses	448.00
June, 1995	Sutton Press	Printing	318.51
July, 1995	Griffith Enterprises	Mail Expenses	2,893.93
July, 1995	Griffith Enterprises	Printing Expenses	2,546.00
July, 1995	U.S. Postal Service	Mail Expenses	320.00
July, 1995	Sutton Press	Printing	<u>255.38</u>
	Total		\$13,101.35 ²

There is evidence that the State Committee made expenditures of as much as \$13,000 for a fundraising letter and survey for purposes of testing the waters for Mike Huckabee, an eventual

² These figures do not include the salaries paid to Brenda Turner (a total of \$16,572) and another assistant, Sharon Hicks, (a total of \$2,333) as reported by the State Committee for May, June and July, 1995. According to the AEC review of the State Committee's reports and records, the \$10,545 paid Ms. Turner in May was "for work performed between January 1 and May 7, 1995" and was paid "after the first debt retirement fund raising effort," thus presumably covering any work she performed with regard to the May fund raising letter and survey at issue in this matter.

candidate for nomination to the U.S. Senate. Therefore, there is reason to believe that the Huckabee Election Committee and Prissy Hickerson, as treasurer, violated 2 U.S.C. § 441b.

b. Washington, DC Trip

According to information alleged in a news account attached to the complaint, Mr. Huckabee used \$2,000 in 1994 campaign funds to pay for an August, 1995 trip to Washington, DC by himself and his assistant, Brenda Turner. The complaint asserts that this trip, which in part involved meetings with Republican Congressional leaders and other party leaders, was made for purposes of testing the waters for a 1995-96 Huckabee federal campaign.

According to assertions in the response from the Senate Committee and in the affidavit signed by Brenda Turner, the only purpose for this trip was to meet with a consultant to the 1994 Huckabee state campaign regarding a debt owed to him by the State Committee. The Senate Committee and Ms. Turner argue that the meetings with Republican leaders and others cited in the complaint were "courtesy visits" during which no discussion of a possible Senate race was held. Ms. Turner acknowledges that the meetings included ones with Republican leaders in the U.S. Senate and House of Representatives, including representatives of the National Republican Senatorial Committee.

The Commission's regulations at 11 C.F.R. § 106.3(b)(3) state that if "a candidate conducts any campaign-related activity in a stop, that stop is a campaign-related stop, and travel-related expenditures made are reportable." The only exceptions are "incidental contacts." In the present matter, Mr. Huckabee and Ms. Turner met with a series of Republican Party leaders during their three-day stay in Washington, DC. Given the number of meetings involved and the leadership positions represented, these meetings do not appear to have been "incidental." In

addition, both the Senate Committee response and Ms. Turner acknowledge that the subject of Mr. Huckabee's possible Senate candidacy arose at these meetings. As noted above, Mr. Huckabee was quoted in the Arkansas Democrat-Gazette on August 6 as having referred to the positive "reaction" which he had received with regard to a potential Senate candidacy, indicating that the subject of a potential candidacy may have been initiated by himself.

On the basis of the information presently available with regard to the Washington, DC trip, it appears that this visit became a campaign related, "testing-the-waters" stop, whether or not it was initially planned as such. Therefore, any expenditures for the trip became in-kind contributions to the Senate Committee.

Again, the Senate Committee's response does not set out the costs of this trip. The State Committee's July, 1995 amended report itemizes a \$3,394.50 payment to "Mastercard," a \$361.46 payment to Brenda Turner, and a \$350 payment to "CNB," all for "travel expenses." The State Committee's August, 1995 report contains no travel expenses. Thus, it appears that the costs of the Washington, DC trip are reflected in the July report, although only as part of overall travel expenditure totals. Based upon the February, 1996 Arkansas Times article, the Washington-related portion of these travel costs may have been as high as \$2,000.

The funds used by the State Committee to make any and all expenditures related to the Washington, DC trip would likely have contained monies prohibited under the Act. Thus, there is reason to believe that the Huckabee Election Committee and Prissy Hickerson, as treasurer, violated 2 U.S.C. § 441b by making in-kind contributions to the Senate Committee in connection with the Washington, DC trip.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 4323

**INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

TO: Prissy Hickerson, Treasurer
Huckabee Election Committee
P.O. Box 1557
Texarkana, Arkansas 75504-1557

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within 30 days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

INSTRUCTIONS

In answering these interrogatories and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from May 1, 1995 to June 30, 1996.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondents in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to, books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"Itemize" shall mean state the full name of the payee, the amount, the date and the purpose of an expenditure.

"State Committee" shall mean the Huckabee Election Committee, the authorized campaign committee of Mike Huckabee for his 1994 campaign for the office of Lieutenant Governor in the State of Arkansas.

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"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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QUESTIONS

1. The report issued by the Arkansas Ethics Commission following its review of State Committee records found that the State Committee had raised \$91,825.00 in contributions after the 1994 general election. Reports submitted by the State Committee to the Arkansas Ethics Commission show a total of \$115,646.25 in receipts between May 1 and August 31, 1995. Please explain the discrepancy between these two figures.
2. With regard to the "two-page debt retirement letter" issued by the State Committee in May, 1995, which is cited by Beverly Turner in her affidavit filed in this matter,
 - a. please itemize by payee all expenditures made by the State Committee in connection with this fundraising letter and the enclosed survey, including Committee personnel costs allocable to this activity, and
 - b. please identify all persons involved in the preparation and approval of this fundraising letter and survey.
3. Please state whether the State Committee issued any other fundraising letters and/or surveys between May 1, 1995 and June 30, 1996.
 - a. If yes, please itemize all expenditures made by the State Committee in connection with such fundraising letters, including Committee personnel costs allocable to this activity.
 - b. Please identify all persons involved in the preparation and approval of these fundraising activities.
4. Please specify by date, purpose and quantity any and all mailings involved in the following expenditures listed in the State Committee's Reports of Contributions and Expenditures filed in 1995.

May, 1995	US Postal Service	\$ 137.95
May, 1995	Griffith Enterprises	1,500.00
June, 1995	Griffith Enterprises	4,681.58
June, 1995	US Post Office	448.00
June, 1995	Sutton Press	318.51
July, 1995	Griffith Enterprises	2,893.93
July, 1995	Griffith Enterprises	2,546.00

July, 1995	US Postal Service	320.00
July, 1995	Sutton Press	255.38

5. Please itemize all expenditures made by the State Committee in connection with the trip to Washington, DC made by the Honorable Mike Huckabee and Ms. Beverly Turner on August 1-3, 1995.
6. Please itemize, identify the travelers involved, and give the purpose for the travel-related charges covered by the following expenditures listed in the State Committee's Reports of Contributions and Expenditures filed in 1995.

May, 1995	VISA	\$4,146.13
May, 1995	Mastercard	1,443.00
June, 1995	Mastercard	441.00
June, 1995	Brenda Turner	1,135.86
June, 1995	Bill Cope	593.75
July, 1995	Brenda Turner	361.46
July, 1995	Mastercard	3,394.50
July, 1995	CNB	350.00
September, 1995	Discover	623.00

7. Please itemize and/or give the purpose for the following expenditures listed in the State Committee's Reports of Contributions and Expenditures filed in 1995.

June, 1995	Discover	\$2,017.82
June, 1995	Fuller Enterprises	200.00
July, 1995	Little Rock Club	707.55
July, 1995	Republican Party of Arkansas	1,000.00

8. Please describe in detail any and all fund-raising projects and/or special events involved in the following expenditures for telephone services:

May, 1995	GTE	\$ 976.63
May, 1995	AT&T	790.03
June, 1995	GTE	1,303.23
June, 1995	Brenda Turner	399.05
June, 1995	AT&T	844.59
July, 1995	GTE	2,052.24

REQUESTS FOR DOCUMENTS

1. Please provide copies of all reports filed by the State Committee with the Arkansas Ethics Commission between October 1, 1995 and June 30, 1996.
2. Please provide all solicitation letters and surveys produced and distributed by and for the State Committee between May 1, 1995 and June 30, 1996.
3. Please provide all documents related to the production and distribution of each solicitation letter and survey cited in Request for Documents #2 above.
4. Please provide all documents related to the expenditures for the trip to Washington, DC cited in Question #5 above.
5. Please provide all documents related to the expenditures for travel listed in Question #6 above.